

1  
2  
3  
4  
5  
6  
7 EMILY MASUDA,  
8 Plaintiff,

9 v.  
10 LUCILE SALTER PACKARD  
11 CHILDREN'S HOSPITAL AT  
12 STANFORD, et al.,

Defendants.

Case No. 20-cv-09389-BLF

**ORDER GRANTING MOTION TO  
REMAND**

[Re: ECF No. 16]

13  
14 Plaintiff Emily Masuda brings this putative class action against Defendants Lucile Salter  
15 Packard Children's Hospital at Stanford, Stanford Health Care, and Stanford Health Care  
16 Advantage (collectively, "Defendants"), alleging violations of the Fair Credit Reporting Act  
17 ("FCRA"). *See* ECF No. 1-1, Exhibit B ("Compl."). Defendants removed this action to this  
18 Court, alleging federal question jurisdiction under 28 U.S.C. § 1331. *See* ECF No. 1. Before the  
19 Court is Plaintiff's Motion to Remand to state court, in which Plaintiff argues that she lacks  
20 Article III standing to bring this claim in federal court. *See* ECF No. 16 ("Mot." or "Motion").  
21 Defendants oppose the Motion, arguing that there is Article III standing. *See* ECF No. 19  
22 ("Opp."). The Court finds this Motion suitable for disposition without oral argument and  
23 VACATES the September 30, 2021 hearing. *See* Civil. L.R. 7-1(b). For the following reasons,  
24 the Court GRANTS Plaintiff's Motion to Remand and REMANDS this case to the Superior Court  
25 of the State of California for Santa Clara County.

26 **I. BACKGROUND**

27 Plaintiff alleges that when she applied for employment with Defendants, Defendants  
28 provided her with a disclosure and authorization form to perform a background check on her.

1 Compl. ¶ 24. Plaintiff alleges that Defendants did not provide legally compliant disclosure or  
2 authorization forms because the forms contained “extraneous and superfluous language” in  
3 violation of the “clear and conspicuous” and “clear and accurate” requirements of section  
4 1681(b)(2)(A) and 1681d(a) of the FCRA. *Id.* ¶ 25. Plaintiff further alleges that the disclosure  
5 and authorization forms did not accurately provide a summary of rights and the law and were not  
6 standalone documents, both as required by the FCRA. *Id.* ¶¶ 26-27. Plaintiff alleges that  
7 Defendants routinely acquire credit and background reports, like those they sought to obtain on  
8 Plaintiff, in connection with their hiring process. *Id.* ¶ 2. Plaintiff seeks to represent a class of all  
9 of Defendants’ current, former, and prospective applicants for employment in the United States  
10 who applied for a job and had a background check performed on them, from five years prior to the  
11 filing of this case through final judgment. *See id.* ¶ 16. Plaintiff seeks “statutory damages and/or  
12 actual damages, punitive damages, injunctive and equitable relief[,] and attorneys’ fees and costs.”  
13 *Id.* ¶ 61; *see also id.* Prayer for Relief.

14 Plaintiff filed the Complaint in Santa Clara County Superior Court on November 13, 2020.  
15 *See* Compl. at 1. Defendants removed the case to this Court on December 29, 2020. *See* ECF No.  
16 1. Plaintiff filed this Motion to Remand on March 29, 2021. *See* Mot.

## 17 **II. LEGAL STANDARD**

### 18 **A. Removal**

19 A suit may be removed from state court to federal court only if the federal court would  
20 have had subject matter jurisdiction over the case. 28 U.S.C. § 1441(a); *see Caterpillar Inc. v.*  
21 *Williams*, 482 U.S. 386, 392 (1987) (“Only state-court actions that originally could have been filed  
22 in federal court may be removed to federal court by the defendant.”). If it appears at any time  
23 before final judgment that the federal court lacks subject matter jurisdiction, the federal court must  
24 remand the action to state court. 28 U.S.C. § 1447(c).

25 The party seeking removal bears the burden of establishing federal jurisdiction. *Provincial*  
26 *Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009). “The removal  
27 statute is strictly construed, and any doubt about the right of removal requires resolution in favor  
28 of remand.” *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (citation

1 omitted). When the Court determines that it lacks subject matter jurisdiction over an action that  
2 has been removed to federal court, the Court must remand the case to state court. *Polo v.*  
3 *Innoventions Int'l, LLC*, 833 F.3d 1193, 1196 (9th Cir. 2016) (“Remand is the correct remedy  
4 because a failure of federal subject-matter jurisdiction means only that the federal courts have no  
5 power to adjudicate the matter. State courts are not bound by the constraints of Article III.”).

6 **B. Article III Standing**

7 In *Spokeo*, the Supreme Court reaffirmed that to have Article III standing, a plaintiff must  
8 have “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the  
9 defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v.*  
10 *Robins*, 136 S.Ct. 1540, 1547 (2016) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61  
11 (1992)).

12 To establish injury in fact, a plaintiff must have suffered “an invasion of a legally  
13 protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or  
14 hypothetical.’” *Spokeo*, 136 S. Ct. at 1548 (citing *Lujan*, 504 U.S. at 560). To be “particularized,”  
15 an injury “must affect the plaintiff in a personal and individual way.” *Id.* (citing *Lujan*, 504 U.S.  
16 at 560 n.1). The Supreme Court in *Spokeo* distilled several “general principles” from its prior  
17 cases with respect to concreteness. *Id.* at 1549–50. A concrete injury is one that is “‘real,’ and not  
18 ‘abstract.’” *Id.* at 1548 (citation omitted). Tangible injuries plainly satisfy this requirement. *Id.* at  
19 1549. Nevertheless, intangible injuries may also be concrete. *Id.* In evaluating whether an  
20 intangible injury satisfies the “concreteness” requirement, the *Spokeo* Court identified two  
21 important considerations (1) “whether an alleged intangible harm has a close relationship to a  
22 harm that has traditionally been regarded as providing a basis for a lawsuit in English or American  
23 courts” and (2) the judgment of Congress, which ““has the power to define injuries and articulate  
24 chains of causation that will give rise to a case or controversy where none existed before.”” *Id.*  
25 (quoting *Lujan*, 504 U.S. at 580 (Kennedy, J., concurring in part and concurring in judgment)).

26 The Supreme Court then elaborated on the connection between statutory standing and  
27 concrete injury. First, the Court explained that “Article III standing requires a concrete injury  
28 even in the context of a statutory violation[.]” *Id.* (citing *Summers v. Earth Island Inst.*, 555 U.S.

1 488, 496 (2009)). Therefore, “[a plaintiff] could not, for example, allege a bare procedural  
2 violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article  
3 III.” *Id.* At the same time, the Supreme Court observed, in cases where “harms may be difficult  
4 to prove or measure[,]” “the violation of a procedural right granted by statute can be sufficient . . .  
5 [and] a plaintiff in such a case need not allege any additional harm beyond the one Congress has  
6 identified.” *Id.* (citing *FEC v. Akins*, 524 U.S. 11, 20–25 (1998); *Pub. Citizen v. De’t of Justice*,  
7 491 U.S. 440, 449 (1989)). The Supreme Court noted that although one of the FCRA’s purposes  
8 is to protect against inaccurate credit reporting, “not all inaccuracies cause harm or present any  
9 risk of harm.” *Id.* at 1550.

10 **III. DISCUSSION**

11 **A. Article III Standing**

12 Plaintiff argues that this case should be remanded to Santa Clara County Superior Court  
13 because she lacks Article III standing to assert her FCRA claim in federal court. *See* Mot. at 4.  
14 Plaintiff argues that she asserts a bare procedural violation of the FCRA, which the Supreme Court  
15 of the United States found does not constitute a concrete injury required under Article III. *See id.*  
16 at 5. Defendants argue that Plaintiff does have Article III standing because the Court can infer that  
17 Plaintiff was confused by the disclosure and authorization forms, which is sufficient to establish  
18 concrete injury. *See* Opp. at 4-6.

19 The Court agrees with Plaintiff that she has not alleged facts showing that she possesses  
20 Article III standing to assert her FCRA claim in federal court. It is true that alleged procedural  
21 violation of a statute “can by itself manifest a concrete injury where Congress conferred the  
22 procedural right to protect a plaintiff’s concrete interests.” *Robins v. Spokeo, Inc.*, 867 F.3d 1108,  
23 1113 (9th Cir. 2017). But the weight of authority under the FCRA post-*Spokeo* holds that mere  
24 procedural violations of the FCRA’s requirements for consumer reports cannot establish concrete  
25 injury and confer Article III standing. *See, e.g., Orpilla v. Schenker, Inc.*, 2020 WL 2395002, at  
26 \*4 (N.D. Cal. May 12, 2020) (no standing where disclosures contained extraneous information and  
27 were obtained without authorization); *Williams v. Nichols Demos, Inc.*, 2018 WL 3046507, at \*4  
28 (N.D. Cal. June 20, 2018) (no standing where disclosures contained extraneous information and

1 did not separate content into standalone forms). Procedural violations are exactly what Plaintiff  
2 has alleged here: the failure to obtain proper authorization and distribution of forms that contained  
3 superfluous and extraneous language, omitted required summaries of rights and the law, and failed  
4 to separate content into required standalone documents. Compl. ¶¶ 25-27.

5 In opposition, Defendants rely almost exclusively on *Syed v. M-I, LLC*, 853 F.3d 492 (9th  
6 Cir. 2017), to argue that Plaintiff has Article III standing. In *Syed*, the plaintiff received a  
7 disclosure document that included a liability waiver, allegedly in violation of § 1681b(b)(2)(A)(i).  
8 Years later, the plaintiff discovered the violation when he obtained and reviewed his personnel file  
9 from the defendant and “discovered that [defendant] had procured and/or caused to be procured a  
10 ‘consumer report’ regarding him for employment purposes based on the illegal disclosure and  
11 authorization form.” *Syed*, 853 F.3d at 499. The Ninth Circuit found these allegations sufficient  
12 to “infer that Syed was confused by the inclusion of the liability waiver with the disclosure and  
13 would not have signed it had it contained a sufficiently clear disclosure, as required by the  
14 statute.” *Id.* at 499-500. That inference led to the conclusion that “Syed was deprived of the right  
15 to information and right to privacy” guaranteed by the FCRA, which is a concrete injury. *Id.* at  
16 500.

17 Here, in contrast, there is no fair inference to be made that Plaintiff was confused or had  
18 her right to information and right to privacy violated. Plaintiff does not allege that she was  
19 confused by the forms, that she later discovered that a consumer report had been generated when  
20 she had not expected it, or that she suffered any other harm from the noncompliant forms.  
21 Numerous recent district court cases have distinguished *Syed* on the same basis. *See Orpilla*, 2020  
22 WL 2395002, at \*4 (*Syed* inapposite because plaintiff “made no allegations of confusion, late  
23 discovery of [d]efendant’s violation of the FCRA, or any other allegation from which the [c]ourt  
24 may infer that she was confused or that she would not have signed the document if she had  
25 received clear disclosures”); *Moore v. United Parcel Serv., Inc.*, 2019 WL 2172706, at \*1 (N.D.  
26 Cal. May 13, 2019) (*Syed* inapposite because complaint was “devoid of allegations of confusion,  
27 error, or other harm from the alleged violations that might give rise to standing”). The other cases  
28 Defendants cite in support of this argument all involved allegations of confusion. *See, e.g.*,

1       *Bebault v. DMG Mori USA, Inc.*, 2020 WL 2065646, at \*1 (N.D. Cal. Apr. 29, 2020) (standing  
2 where plaintiff “confused by the extraneous information” in defendant’s disclosure). Contrary to  
3 Defendants’ argument, the single use of the word “confusing” in the Complaint is in a boilerplate  
4 statement of law. *See* Compl. ¶ 26 (“The FCRA disclosure should be a standalone document and,  
5 if desired, a bare authorization to obtain information, without being weighed down by irrelevant  
6 state law references, confusing and contradictory rights summaries, and impermissible references  
7 to side documents containing information not set forth in the attempted disclosure.”). The Court  
8 declines to elevate this “passing reference[]” to confusion to the level of concrete and  
9 particularized harm required for Article III standing. *Mansapit v. Deluxe Corp.*, 2019 WL  
10 2423423, at \*1 (N.D. Cal. June 10, 2019).

11       Defendants also argue that Plaintiff is seeking actual damages and thus has alleged Article  
12 III injury-in-fact. *See* Opp. at 6 (citing Compl. ¶¶ 47, 60, Prayer for Relief). It is true that the  
13 Complaint uses the words “actual damages” in those sections. Paragraphs 47 and 60 make clear  
14 that Plaintiff is seeking “statutory damages and/or actual damages” under the FCRA, but the relief  
15 sought in the Prayer does include “actual damages” by itself. In any case, the Court also declines  
16 to infer concrete harm from these isolated phrases. What controls are Plaintiff’s allegations about  
17 the forms and the effect they had on her, and those allegations do not resemble the kind which the  
18 Ninth Circuit has found confers Article III standing.

19       **B. Request for Limited Discovery**

20       In the alternative, Defendants argue that Plaintiff should not be allowed to “evade federal  
21 jurisdiction” by “clever pleading,” and so if the Court is inclined to find no Article III standing,  
22 the Court should first order limited discovery on the standing issue to prevent Plaintiff from later  
23 asserting confusion or some other injury that would confer standing. *See* Opp. at 7-9. Defendants  
24 propose requiring Plaintiff to submit a sworn declaration or sit for a limited deposition. *Id.* at 9.

25       The Court finds additional discovery unwarranted. Under the artful pleading rule, a  
26 “plaintiff may not defeat removal by omitting to plead necessary federal questions in a complaint.”  
27 *JustMed, Inc. v. Byce*, 600 F.3d 1118, 1124 (9th Cir. 2010) (citation omitted). But the Court is not  
28 persuaded that Plaintiff has omitted facts necessary to federal jurisdiction. The Complaint is

1 clearly brought under federal law: the FCRA. And the FCRA provides for statutory damages of  
2 \$100 to \$1,000 even if no actual damages are sustained. 15 U.S.C. § 1681n(a). As such, Plaintiff  
3 is free to plead (truthfully, of course) that she did or did not sustain actual harm. Defendants'  
4 speculative arguments regarding what Plaintiff may or may not do at later stages of the litigation  
5 are simply irrelevant and are not grounds for discovery. If Plaintiff does change course at a later  
6 stage of the litigation and make representations inconsistent with those in her Complaint regarding  
7 her injury, Defendants are free to seek appropriate relief from the state court at that time.

8 **C. Remedy**

9 Defendants' final argument is that if the Court finds that there is no Article III standing, the  
10 proper remedy is dismissal of the case rather than remand to the state court. *See Opp.* at 6-7.  
11 Defendants say dismissal is warranted because "if the Court were to determine this is a no-injury  
12 FCRA case, as Plaintiff contends, then it should not be allowed to proceed regardless of where it is  
13 brought," making remand futile. *See id.* at 7. But this is not so. "[A] lack of Article III standing  
14 does not necessarily preclude a plaintiff from vindicating a federal right in state court." *Moore*,  
15 2019 WL 2172706, at \*2 (citing *Collier v. SP Plus Corp.*, 889 F.3d 894, 897 (7th Cir. 2018)).  
16 Other courts have noted this "quirk of the United States federalist system" that a state court may  
17 possess "jurisdiction to adjudicate a federal claim when a federal court does not." *See Miranda v.*  
18 *Magic Mountain LLC*, 2018 WL 571914, at \*3 (C.D. Cal. Jan. 25, 2018). Remand is the proper  
19 remedy here, and the parties can litigate whether Plaintiff possesses standing under California law  
20 in front of the state court. *Polo*, 833 F.3d at 1196.

21 **IV. ORDER**

22 For the foregoing reasons, IT IS HEREBY ORDERED that Plaintiff's Motion to Remand  
23 is GRANTED. The Clerk shall REMAND this case to the Superior Court of the State of  
24 California for Santa Clara County.

25  
26 Dated: September 22, 2021  
27  
28

  
BETH LABSON FREEMAN  
United States District Judge